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## Agenda Item 3c

October 18, 2011

**TO: MEMBERS OF THE BENEFITS AND PROGRAM ADMINISTRATION COMMITTEE**

- I. SUBJECT:** Proposed Regulation for Contract Related Disclosure Policy
- II. PROGRAM:** Total Fund
- III. RECOMMENDATION:** Staff recommends Board approval of the proposed regulatory language (Attachment A) and initiation of the rulemaking process to add Section 559.1 to Title 2 of the California Code of Regulations to
  - (1) establish required contract disclosures and
  - (2) establish criteria for disqualifying proposals or terminating contracts based on Staff's review and analysis of the contract disclosures.

#### **IV. ANALYSIS:**

In November 2010, the CalPERS Board approved the Contract-Related Disclosure Requirements Policy ("Policy"). The Policy requires contractors and potential contractors to disclose their retention of agents assisting in obtaining CalPERS contracts, the fees they pay them, the services performed, and other information about their engagement. Contractors must also disclose their relationship(s) with these agents and provide copies of relevant documentation including engagement agreements. In addition, contractors must disclose their financial and familial relationship with any current or former Board or staff member of CalPERS and must identify any payments, gifts, loans, and other things of value given or offered by the contractor or by any agent to any current or former Board or staff member of CalPERS during the twelve months preceding the initiation of the proposal, contract, contract amendment, letter of engagement or consulting services purchase order. The Policy approved in November 2010 is attached as Attachment B.

The Policy applies to all new contracts and amendments, existing contracts (including contract extensions), letters of engagement, consulting purchase orders and similar agreements, and to bidders' proposals, where the total

amount of agreement is \$10,000 or more. The Policy also applies to proposals and contract awards made from Requests for Proposal and Invitations for Bid, regardless of amount.

The proposed regulation is for the purpose of adopting the Policy as a regulation. The proposed Notice of Regulatory Action, which contains the text of the proposed regulation, is attached as Attachment A.

If Board approval is received, the regulation adoption process requires:

- Publication of the Notice of Proposed Regulatory Action in the California Regulatory Notice Register;
- A minimum 45 day public written comment period;
- A public hearing if requested by a member of the public;
- Final Board approval to adopt the proposed regulations; and
- Transmission to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations.

If no changes are made to the regulation during the public comment period, Section 559.1 could take effect on January 1, 2012.

## **V. RISKS:**

Staff is currently implementing the Policy and this has resulted in additional work load for staff in the Contracts and Enterprise Compliance sections. If staff's recommendation to approve the regulation is adopted, staff's work in implementing the Policy will continue.

Possible risks if the recommendation is not approved are that the Policy might be challenged as an underground regulation, and CalPERS might enter into a contract that is the result of improper influence or that involves a conflict of interest. The latter could harm CalPERS' reputation as well as potentially result in costs to the System.

## **VI. STRATEGIC PLAN:**

This item supports Goal VI: Administer pension benefit services in a customer-oriented and cost-effective manner.

## **VII. RESULTS/COSTS:**

The regulation will increase transparency in the contracting process. There will be some additional costs associated with this new policy in the form of additional staff procedures and forms.

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